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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 CYRUS Y. KIM,

10 Plaintiff,

11 v.

12 CITY OF FEDERAL WAY,

13 Defendant.

No. C08-0688JLR

ORDER

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15 This matter comes before the Court under Local General Rule 8(c). Plaintiff has  
16 filed a second “Motion for Recusal” in the above-captioned matter. Dkt. # 16. Plaintiff seeks to  
17 have the Honorable James L. Robart, United States District Judge, removed from this case.  
18 Judge Robart declined to recuse himself voluntarily and referred the matter to the Chief Judge.  
19 Dkt. # 19. Plaintiff’s request is therefore ripe for review by this Court.

20 Section 455 of title 28 of the United States Code governs the disqualification of judges. It  
21 states in relevant part: “Any justice, judge, or magistrate judge of the United States shall  
22 disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”  
23 Additionally, 28 U.S.C. § 144, pertaining to judicial bias or prejudice, provides:

24 Whenever a party to any proceeding in a district court makes and files a timely and  
25 sufficient affidavit that the judge before whom the matter is pending has a personal  
26 bias or prejudice either against him or in favor of any adverse party, such judge  
shall proceed no further therein, but another judge shall be assigned to hear such  
proceeding. The affidavit shall state the facts and the reasons for the belief that

ORDER

1 bias or prejudice exists.

2 A judge must recuse himself if a reasonable person would believe that he is unable to be  
3 impartial. Yagman v. Republic Insurance, 987 F.2d 622, 626 (9th Cir. 1993).

4 Plaintiff argues that Judge Robart's dismissal of plaintiff's claims in another case,  
5 C08-1617JLR, was the result of "incapacity as a United States judge" and "dishonesty." Dkt.  
6 # 16 at 7. Plaintiff offers his own analysis of the legal issues decided in C08-1617JLR in  
7 support of his argument that Judge Robart does not understand the governing law and should be  
8 removed from this matter. Judge Robart's statute of limitations analysis in C08-1617RSL was  
9 reasonable in light of the documents before him, however. While plaintiff clearly disagrees with  
10 the dismissal, he has identified no error of law or fact, much less a determination that was so  
11 outlandish as to give rise to an inference of bias. To the extent plaintiff disagrees with the  
12 presiding officer's decision, such issues are properly raised through an appeal, not a motion to  
13 recuse.

14 Where the only evidence of bias presented is the judge's prior decisions, the risk  
15 that the litigant is using the recusal motion for strategic purposes is considerable. See Ex Parte  
16 American Steel Barrel Co. and Seaman, 230 U.S. 35, 44 (1913). Plaintiff neither asserts that  
17 Judge Robart is biased nor identifies an extrajudicial source of prejudice. He has therefore not  
18 met his burden of showing an appearance of bias. Because Judge Robart's impartiality cannot  
19 reasonably be questioned, plaintiff's request to remove Judge Robart from this matter is  
20 DENIED.

21 Dated this 22nd day of January, 2009.

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24 Robert S. Lasnik

25 Chief Judge, United States District Court  
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